No. 14098

United States Court of Appeals

FOR THE NINTH CIRCUIT

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 142, an Unincorporated Association,
Appellant,

vs.

LIBBY, McNEILL & LIBBY, a Corporation,
Appellee.

Appeal from the United States District Court for the District of Hawaii.

APPELLANT'S OPENING BRIEF

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Appeal from the United States District Court for the District of Hawaii.

APPELLANT'S OPENING BRIEF

JURISDICTIONAL STATEMENT

This is an appeal from a final order and judgment of the United States District Court for the District of Hawaii dismissing appellant's suit for breach of contract and for declaratory judgment on the ground that the court was without jurisdiction to grant the relief prayed (R. 30–31). Appellant invoked the jurisdiction of the District Court under Section 185 (a) of Title 29 of the United States Code conferring on district courts jurisdiction of suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, without regard to the amount in controversy or the citizenship of the parties, and the declaratory judgment provisions contained in Sections 2201 and 2202 of Title 28 of the United States Code.

The jurisdiction of this Court to review the final order and judgment of dismissal is conferred by Section 1291 and Section 451 of Title 28 of the United States Code.

STATEMENT OF THE CASE

The International Longshoremen's and Warehousemen's Union, Local 142, the appellant herein, brought suit in the United States District Court for the District of Hawaii against Libby, McNeill & Libby, appellee herein, seeking to have its rights under a collective bargaining agreement declared and established and to have the company declared to be in violation of the agreement. By way of ancillary relief to the declaration of rights, the union sought to have the company enjoined from continuing to violate the collective bargaining agreement in force between the parties by terminating the employment of employees who reach the age of 65 years, solely on the ground of age (R. 3–7). The company filed its answer admitting some and denying other allegations of the complaint (R. 9–17).

After a pre-trial conference, the court entered a pre-trial order on May 11, 1953 (R. 18–22). The trial of the case was held on May 12, 1953. The court filed its decision on August 6, 1953, holding that the court was without power to grant the relief prayed, and that the case must be dismissed (R. 23–30).

On August 12, 1953 the court made and entered its final order of dismissal (R. 30–31). On August 21, 1953 the union filed its motion for a new trial (R. 31–36). On September 25, 1953 the court filed its ruling denying the motion for a new trial (R. 37–40).

Notice of appeal and appellant's bond were filed on October 1, 1953 (R. 40–43).

The admitted facts set forth in the pre-trial order show: The International Longshoremen's and Warehousemen's Union, Local 142 is the duly certified bargaining agent of

the employees of Libby, McNeill & Libby, including Miyuki Takahama. There was and now is an existing collective bargaining agreement between the company and the union. Miyuki Takahama, on the date of the filing of the complaint, was a member of the union, and until September 28, 1951 was an employee of the company. On that date Mrs. Takahama was separated from her employment by the company on oral notice for the assigned reason that she had passed her 65th birthday. Mrs. Takahama, under the grievance procedures provided for in the collective bargaining agreement between the parties, had asserted her improper separation from the company's employ in violation of Section 5 and 22 of the contract. Mrs. Takahama's grievance was not adjusted under the grievance machinery of the contract, and the company refused the union's request to submit the issue to arbitration (R. 18–21). The union sought from the court a declaratory judgment determining and declaring its rights under the collective bargaining agreement and specifically declaring the company had breached the terms of the agreement in removing Miyuki Takahama from its payroll, and an injunction against the company restraining it from removing any of its other employees covered by the collective bargaining agreement from its payroll solely upon the ground that the employee had reached the age of 65 years (R. 8).

The court held (1) that Section 185 of Title 29 of the United States Code conferred jurisdiction on district courts "for the sole purpose of actions for damages" and hence the court had, under that section, no jurisdiction to grant declaratory relief (R. 28–29), (2) that by reason of the inclusion of the prayer for injunctive relief, the court was without jurisdiction of the entire action by virtue of the provisions of the Norris–La Guardia Act contained in Sections 101–115 of Title 29 of the United States Code.

SPECIFICATIONS OF ERRORS

Assignment No. 1

The United States District Court for the District of Hawaii, hereinafter referred to as the Court, erred in dismissing the action upon the ground and for the reason that the Court lacks jurisdiction of the action.

Assignment No. 2

The Court erred in refusing to grant a new trial upon the same ground and reason stated above.

SUMMARY OF ARGUMENT

Section 185 of Title 29 of the United States Code confers jurisdiction on the District Court of "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . ." The statute does not in any way qualify the term "suits." The Court's decision which limited the jurisdiction to actions for monetary damages was an unwarranted limitation of the jurisdiction conferred by Section 185, and contrary to the avowed policy of the Labor-Management Relations Act, 1947. Both the language of the section and the decided cases support the appellant's contention that the jurisdiction of the courts is broader than suits for money damages. The Court had jurisdiction to entertain the cause, declare the rights of the parties, and upon a proper showing, grant ancillary injunctive relief.

ARGUMENT

The District Court dismissed appellant's action on the ground that it lacked jurisdiction of the cause. In its decision the court held:

(1) That since injunctive relief was part of the prayer of the appellant, the court was precluded by reason of the provisions of the Norris–La Guardia Act (29

United States Code 101–115) from exercising jurisdiction. The court said:

> Therefore, this case, in which jurisdiction is alleged to exist solely under 29 United States Code 185, and in which the demand is for an injunction of breach of a labor relations contract after a declaration of the rights of the parties, is before a court which has not been given the power to grant the relief prayed for, and the cause must be dismissed. (R. 29, 30.)

(2) That "29 United States Code 185 conferred jurisdiction for the sole purpose of actions for damages," (R. 28, 29) and hence, inferentially did not authorize the declaratory relief sought by appellant.

The appellant was seeking a declaration of its rights under a collective bargaining agreement. It sought specifically a declaration that the appellee was in violation of the agreement when it separated Mrs. Miyuki Takahama from its employ and when it refused to submit the matter to an arbitrator for decision. (R. 21.)

If the declaration of rights was favorable, appellant sought an order enjoining appellee from further violating the agreement. What the appellant sought primarily was the establishment of its rights, and the injunctive relief prayed for was dependent upon and ancillary to the declaration.

Section 185 of Title 29, United States Code, which the court construed as permitting only suits for damages, provides in part:

> "a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship."

This section contains no words of limitations with respect to the nature of a suit over which the court has jurisdiction. The court, however, read the reference to money judgment against unions contained in Section 185 (b) into Section 185 (a). The pertinent part of Section 185 (b) reads as follows:

> ". . . Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

There is nothing in this section relating to or limiting the type of action that can be brought by employers or labor organizations for breach of collective bargaining agreements. It merely protects the estates of the individual members of unions in the event of a money judgment against a labor organization.

The court went behind the language of the section to find a supposed Congressional intent. The court reasoned that as Congress apparently was thinking primarily of suits by employers against unions when it passed Section 185, only suits for damages were allowed. To buttress this reasoning the court found that Congress "showed most consideration for the welfare of individual union members and their estates by exempting the latter from liability for judgments obtained against unions." (R. 28.)

It is common knowledge that labor organizations have expressed the view that the motivation of Congress in adopting the Act was anti-union, and pro-employer. Motivation behind an enactment as a whole differs from legislative intent. Where the language of a section is clear, principles of statutory construction require that the court accord to the words of the statute their clear meaning.

That a union might sue an employer under Section 185 (a) was not questioned even by the trial court. The

quoted portion of Section 185 (b) has no application at all to a suit by a union against a company, but applies only when a company gets a money judgment against a union. This contention that Section 185 (b) limits the jurisdiction of courts under Section 185 (a) is untenable for this very reason. If Congress had intended to limit such suits under Section 185 (a) to damage suits only, it would have been a simple matter to qualify the term "suits."

The avowed purpose Congress expressed in the Labor-Management Relations Act, 1947, commonly called the Taft Hartley Act, was to stabilize labor relations. Part of the policy of the Act which Congress expressed in the Act itself was to provide orderly and peaceful procedures for preventing the interference by either employers, employees, or labor organizations with the legitimate rights of others. [29 USC 141 (b)]. The provisions for the enforcement of collective bargaining agreements were enacted to carry out this expressed policy.

In the instant case, appellant sought the aid of the court to determine its rights under a collective bargaining agreement after a dispute had arisen as to the meaning of the agreement. It turned to the courts when the appellee refused to settle the controversy by arbitration as provided for under the contract. If the courts limit the application of Section 185 (a) to monetary damages only, the intent of Congress to provide legal machinery for the enforcement of collective bargaining agreements is nullified.

The district court's interpretation that Section 185 (a) is limited to damage suits only and does not encompass declaratory relief is in conflict with the rulings of federal district and appellate courts on this issue. Indeed, appellant has been able to find no case supporting the district court on this aspect of its ruling, and the district court cited none.

In *American Federation of Labor v. Western Union Telegraph Co.,* 179 F. 2d 535 (6 Cir. 1950) , the plaintiff union

filed an action for a declaratory judgment for breach of a collective bargaining agreement. The district court dismissed the action for want of jurisdiction. On appeal, the judgment was reversed by the Sixth Circuit Court of Appeals, and the case remanded for trial on the merits.

The plaintiff in the *Western Union* case, as in the instant case, asserted that jurisdiction of the United States District Court was based on 29 USC 185 and 28 USC 2201, 2202. The Court of Appeals said at page 538:

> "We are of opinion that the complaint clearly states a cause of action of which the United States District Court has jurisdiction. The action is one for violation of contract between appellant and appellee within the express provisions of Section 301 (a) of the Labor-Management Relations Act of 1947; and Section 400 of the Federal Declaratory Judgment Act vests in the Federal court the right to grant the character of relief prayed if appellant proves the allegations of its complaint . . ."

In *Milk & Ice Cream Drivers and Dairy Employees Union, Local 98 v. Gillespie Milk Products Corp.,* 203 F. 2d 650 (6 Cir. 1953), the plaintiff union brought an action under 29 USC §185 and 28 USC §§2201, 2202, to enjoin the employer from violating a collective bargaining agreement. The employer moved to dismiss the complaint upon the ground that the complainant's prayer for injunction must be denied because of the compulsions of the Norris–La Guardia Act. The District Court granted the motion. The Court of Appeals reversed the decision and remanded the cause for trial on its merits. In commenting on Section 185, the Court said at page 651:

> "We think the unqualified use of the word 'suits' in the Labor-Management Relations Act authorizes injunctive process for the full enforcement of the substantive rights created by Section 301 (a), which reads: [quoting 29 USC 185 (a)]"

In *Textile Workers Union of America v. Aleo Manufacturing Co.,* 94 F. Supp. 626 (M. D. N. C. 1950), the union brought action against the company to compel defendant to comply with terms of a collective bargaining agreement. The court held that the complaint stated a cause of action within the jurisdiction of the Labor-Management Relations Act and the Federal Declaratory Judgment Act. In discussing the power of the court to grant injunctions, the court held that the Norris–La Guardia Act did not preclude the issuance of an injunction where the union was seeking a mandatory injunction requiring the defendant to perform its collective bargaining agreement. The court states at page 629 of the opinion:

> "The remaining point raised by the defendant challenges the power of the court to grant injunctive relief on account of the inhibitions of the Norris–La Guardia Act, 29 U.S.C.A. §101 et seq. Defendant insists that the court is barred from issuing an injunction in any case involving a labor dispute, citing 29 U.S.C.A. §52 and 29 U.S.C.A. §104 (a) and (c). Plaintiff is not seeking an injunction against the defendant doing anything embraced in (a) or (c). A mandatory injunction requiring defendant to perform its agreement in no manner involves (a) or (c). These sections are limitations in behalf of employees; they have no application to an injunction against an employer. Any statement in the decisions purporting to give the broad construction claimed by the defendant will be found in cases where an injunction was sought by the employer. It is inaccurate to say that the court is barred from issuing an injunction in any case involving a labor dispute. . . ."

Another case where the court did not hesitate to exercise jurisdiction over an action for declaratory judgment and other relief under 29 USC §185 was the case of *Textile Workers Union of America v. Arista Mills Co.* The district court denied the injunctive relief and damages prayed for but declared the rights of the parties under the agreement.

This was affirmed by the Court of Appeals for the Fourth Circuit in 193 F. 2d 529.

Other cases where the plaintiffs sued for declaratory judgment and further relief are *United Protective Workers v. Ford Motor Co.,* 194 F. 2d 997 (7 Cir. 1952) and *Alcoa Steamship Co. v. McMahon,* 81 F. Supp. 541 (S. D. N. Y. 1948). In both of these cases, jurisdiction to grant declaratory relief was not questioned. In the *Alcoa* case, a declaratory judgment was entered even though the court said that injunctive relief was precluded by the Norris–La Guardia Act. In *Mountain States Division No. 17, Communication Workers of America v. Mountain States Telephone and Telegraph Co.,* 81 F. Supp. 397 (D. C. Colo., 1948), the plaintiff union sought to enjoin defendant employer from refusing to comply with collective bargaining contracts. In construing Section 185 (a) and (b) and the relief available under it, the court said at page 402 of the opinion:

> "Tit. III, which contains §301 (a), (b), etc., is an entirely new provision. The query naturally arises, why was it enacted as an amendment to the original Act, were it not the intent to remove the exclusive jurisdiction of the board and give the courts the right to exercise equity powers in cases not involving unfair labor practices. Further, the relief sought here is wholly foreign to anything prohibited by the Norris–La Guardia or Clayton Acts, which were aimed at cases involving strikes, lockouts, picketing, etc.
>
> "In conclusion we are of the opinion, and find: (a), the court has jurisdiction, as the case does not involve a labor dispute as defined in the Act, and falls within the exception of §301 (a), (b), vesting exclusive jurisdiction in the board. (b), the contract is still valid, not having been cancelled by either party either pursuant to the terms of the contract or the Act itself. And (c), upon the authorities cited the plaintiff has no adequate remedy at law, and injunctive relief is indicated.

In the recent case of *Textile Workers Union v. American Thread Co.,* 113 F. Supp. 137 (D.C. Mass. 1953), the plaintiff union sought the specific enforcement of an arbitration clause in a collective bargaining agreement. The requested relief was granted. The court, at page 141, was of the opinion that the legislative purpose in enacting Section 185 was broad enough to allow specific enforcement. This case also discussed the application of the Norris–La Guardia and the Federal Arbitration Acts to cases where a mandatory injunction is sought to enforce an arbitration clause. At page 142, the court said:

> In reaching the conclusion that under §301 of the Taft–Hartley Act federal courts can specifically enforce arbitration clauses in labor contracts, this Court has not overlooked either the Federal Arbitration Act of 1925, 9 U.S.C. §1 et seq., or the Norris–La Guardia Act of 1932, 29 U.S.C.A. §101 et seq. The former was drafted a generation ago, prior not only to the Taft–Hartley Act but also the labor relations situation that has developed since the 1930's. If that Act reflects any policy toward enforcement of voluntary arbitration clauses in labor contracts, it is a policy strictly confined to the interpretation and direct enforcement of that statute. The Norris–La Guardia Act is likewise a statute earlier than the Taft–Hartley Act. The general structure, detailed provisions, declared purposes, and legislative history of that statute show it has no application to cases where a mandatory injunction is sought to enforce a contract obligation to submit a controversy to arbitration under an agreement voluntarily made. [citing cases] Indeed one of the very objects of the statute was to induce the parties instead of promptly going to court for broad injunctions hastily issued, restraining tortious or other conduct, first "to make every reasonable effort to settle such dispute *** by *** voluntary arbitration." §8 of the Norris–La Guardia Act, 47 Stat. 72, 29 U.S.C.A. §108.

The District Court in the instant case recognized that the courts which had previously considered this problem of

jurisdiction had found that they had jurisdiction to consider injunctions of "breach of collective bargaining contracts or for other related equitable remedies," but rejected their rulings.

There is more than abundant authority in the cases heretofore cited to sustain the jurisdiction of the District Court in this case. The cited cases indicate that injunctive as well as declaratory relief may be granted. Under these cases even if the court was of the opinion that injunctive relief was precluded, declaratory relief should have been granted. The dismissal of the action only served to postpone and defer the settlement of a problem of vital concern to the members of appellant union as well as to the appellee.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the District Court had jurisdiction to entertain appellant's petition, to declare the parties' rights under the contract and, upon a proper showing, to grant ancillary injunctive relief.

DATED at Honolulu, T. H., this 22nd day of December, 1953.

Respectfully submitted,

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